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Attorneys for Defendants  
S.A. THOMPSON, INC. dba ROTO-ROOTER  
SEWER & DRAIN CLEANING SERVICE;  
STANLEY A. THOMPSON; and LINDA A.  
BLACK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN KING; PATRICK SOVACOOLO;  
and REX MAXWELL, individually, and as  
private attorney generals in the interests of  
the general public,

Plaintiffs,

v.

S.A. THOMPSON, INC., a California  
corporation d.b.a. ROTO-ROOTER  
SEWER & DRAIN CLEANING  
SERVICE; STANLEY A. THOMPSON;  
LINDA A. BLACK; and DOE 1 through  
DOE 10, inclusive,

Defendants.

CASE NO.: 08 CV 1164 L AJB

**DEFENDANTS' S.A. THOMPSON, INC. dba  
ROTO-ROOTER SEWER & DRAIN  
CLEANING SERVICE; STANLEY A.  
THOMPSON; and LINDA A. BLACK  
ANSWER AND AFFIRMATIVE DEFENSES  
TO FIRST AMENDED COMPLAINT**

[DEMAND FOR JURY TRIAL]

Action Filed:  
Trial Date: None set  
Judge:

In response to the numbered paragraphs of the First Amended Complaint, Defendants S.A. THOMPSON, INC. dba ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE; STANLEY A. THOMPSON; and LINDA A. BLACK admit, deny, or otherwise aver as follows:

**PARTIES, JURISDICTION, AND VENUE**

1) Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

2) Admit.

3) Admit.

1 4) Admit.

2 5) This paragraph consists of further characterization of the action, which does not  
3 require an answer, but insofar as an answer may be deemed required, deny.

4 6) This paragraph consists of further characterization of the action, which does not  
5 require an answer, but insofar as an answer may be deemed required, deny.

6 7) This paragraph consists of further characterization of the action, which does not  
7 require an answer, but insofar as an answer may be deemed required, deny.

8 **GENERAL ALLEGATIONS**

9 8) Defendants admit that Plaintiffs were, in the past or presently, an employee of  
10 Defendant S.A. Thompson, Inc. and deny the remaining allegations contained in this paragraph.

11 9) Deny.

12 10) Defendants are not required to answer the portions of this paragraph that are pure  
13 recitations of law. As to the remaining allegations contained in this paragraph, Defendants deny  
14 each and every allegation.

15 11) Defendants are not required to answer the portions of this paragraph that are pure  
16 recitations of law. As to the remaining allegations contained in this paragraph, Defendants deny  
17 each and every allegation.

18 12) Defendants are without sufficient knowledge or information to form a belief as to  
19 the truth of the allegations contained in said paragraph, and on that basis, deny each and every  
20 allegation contained therein.

21 13) Defendants are not required to answer the portions of this paragraph that are pure  
22 recitations of law. As to the remaining allegations contained in this paragraph, Defendants deny  
23 each and every allegation.

24 14) Defendants are not required to answer the portions of this paragraph that are pure  
25 recitations of law. As to the remaining allegations contained in this paragraph, Defendants deny  
26 each and every allegation.

27 15) Deny.

28 16) Deny.

1 17) Deny.

2 18) Deny.

3 19) Deny.

4 **FIRST CAUSE OF ACTION BY ALL PLAINTIFFS AND**  
5 **AGAINST ALL DEFENDANTS FOR UNFAIR COMPETITION**

6 20) Defendant herein incorporates its answers, denials and averments made in  
7 paragraphs six through nineteen.

8 21) Deny.

9 22) Defendants are not required to answer the portions of this paragraph that are  
10 further characterizations of the action, but insofar as an answer may be deemed required, they are  
11 denied. As to the remaining allegations contained in this paragraph, Defendants deny each and  
12 every allegation.

13 23) This paragraph consists of further characterization of the action, which does not  
14 require an answer, but insofar as an answer may be deemed required, deny.

15 24) This paragraph consists of further characterization of the action, which does not  
16 require an answer, but insofar as an answer may be deemed required, deny.

17 25) This paragraph consists of further characterization of the action, which does not  
18 require an answer, but insofar as an answer may be deemed required, deny.

19 26) This paragraph consists of further characterization of the action, which does not  
20 require an answer, but insofar as an answer may be deemed required, deny.

21 **SECOND CAUSE OF ACTION BY ALL PLAINTIFFS AGAINST ALL**  
22 **DEFENDANTS FOR VIOLATION OF LABOR CODE**

23 27) Defendant herein incorporates its answers, denials and averments made in  
24 paragraphs six through nineteen.

25 28) Defendants are without sufficient knowledge or information to form a belief as to  
26 the truth of the allegations contained in said paragraph, and on that basis, deny each and every  
27 allegation contained therein.

28 29) This paragraph consists of further characterization of the action, which does not

1 require an answer, but insofar as an answer may be deemed required, deny.

2 30) This paragraph consists of further characterization of the action, which does not  
3 require an answer, but insofar as an answer may be deemed required, deny.

4 31) This paragraph consists of further characterization of the action, which does not  
5 require an answer, but insofar as an answer may be deemed required, deny.

6 **THIRD CAUSE OF ACTION BY ALL PLAINTIFFS AGAINST ALL**  
7 **DEFENDANTS FOR VIOLATION OF F.L.S.A.**

8 32) Defendant herein incorporates its answers, denials and averments made in  
9 paragraphs six through nineteen

10 33) Defendants are without sufficient knowledge or information to form a belief as to  
11 the truth of the allegations contained in said paragraph, and on that basis, deny each and every  
12 allegation contained therein.

13 34) This paragraph consists of further characterization of the action, which does not  
14 require an answer, but insofar as an answer may be deemed required, deny.

15 **FOURTH CAUSE OF ACTION BY PATRICK SOVACOOOL AGAINST ALL**  
16 **DEFENDANTS FOR VIOLATION OF PUBLIC POLICY**

17 35) Defendant herein incorporates its answers, denials and averments made in  
18 paragraphs six through nineteen.

19 36) Deny.

20 37) Deny.

21 38) Deny.

22 39) Deny.

23 40) Deny.

24 41) Deny.

25 42) This paragraph consists of further characterization of the action, which does not  
26 require an answer, but insofar as an answer may be deemed required, deny.

27 **AFFIRMATIVE DEFENSES**

28 For a further answer to Plaintiff's complaint and by way of affirmative defenses,

1 Defendant alleges as follows:

2 **FIRST AFFIRMATIVE DEFENSE**

3 Without admitting any of the allegations contained in the Complaint, Defendant alleges  
4 that the Complaint fails to state facts sufficient to constitute any cause of action upon which relief  
5 can be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 The Complaint and each cause of action contained therein is barred by the applicable  
8 statute of limitations.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Without admitting any of the allegations contained in the Complaint, Defendant alleges  
11 that Plaintiff has failed and refused, and continues to fail and refuse, to take reasonable or  
12 adequate steps to mitigate, alter, reduce or otherwise diminish the damages, if any, suffered. By  
13 reason of the foregoing, Plaintiff is barred from any recovery of such damage, if any.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Upon information and belief, the damages alleged by Plaintiff, if any, were the direct and  
16 proximate cause of a person or persons or entity or entities other than this answering Defendant  
17 and this answering Defendant's liability is limited in direct proportion to the percentage of fault,  
18 if any, directly attributable to it.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 Upon information and belief, Plaintiff's damages, if any, were proximately caused solely  
21 by the intervening conduct, acts or omissions of parties other than this answering defendant.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 Upon information and belief, if Plaintiff Patrick Sovacool suffered any emotional distress  
24 (and Defendants deny that Plaintiff suffered any such distress), this emotional distress was  
25 proximately caused by factors other than Plaintiff's employment, and/or the action of Defendants  
26 or anyone acting on Defendants' behalves.

27 **SEVENTH AFFIRMATIVE DEFENSE**

28 Plaintiff is barred from any recovery by the doctrines of waiver, estoppel and consent.

**EIGHTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiffs are barred from bringing this action by the doctrine of laches.

**NINTH AFFIRMATIVE DEFENSE**

The Complaint and each of its causes of action are barred by Plaintiff's failure to exhaust her administrative remedies.

**TENTH AFFIRMATIVE DEFENSE**

There is no unity of interest between Defendant S.A. Thompson, Inc. and Defendant Stanley A. Thompson and Defendant Linda A. Black; likewise, Defendant S.A. Thompson, Inc. has met all corporate formalities, is properly capitalized, and is an entity wholly separate from Defendants Thompson and Black.

**ELEVENTH AFFIRMATIVE DEFENSE**

Any recovery on Plaintiffs' Complaint, or any claim or purported cause of action alleged therein is barred because the disputed conduct was privileged and/or justified.

**TWELFTH AFFIRMATIVE DEFENSE**

Upon information and belief, as to each alleged cause of action, Plaintiffs' alleged damage, if any, were and are wholly or partially the proximate result of Plaintiffs' negligence and are thus to be reduced in accordance with the law of comparative negligence.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint, and the whole thereof, does not state facts sufficient to enable Plaintiffs to plead or recover costs, including attorneys' fees and court costs, or prejudgment interest.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

**FIFTEENTH AFFIRMATIVE DEFENSE**

At all times referenced in Plaintiffs' complaint, this answering defendant acted in good faith and did not directly or indirectly induce any act or acts contributing to the alleged damages

1 suffered by Plaintiffs.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 Upon information and belief, Defendant alleges that any unlawful conduct, if any, was  
4 undertaken out of the course and scope of employment of the person or persons undertaking it,  
5 and Defendant denies that it authorized, ratified, acquiesced in, had knowledge of, had reason to  
6 know of, approved of, or directed action by any person or entities, constituting unlawful conduct  
7 towards Plaintiff, whether as alleged or otherwise.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 The Complaint, and each alleged cause of action contained therein, fails to state facts  
10 sufficient to constitute any claim for punitive or exemplary damages against this answering  
11 defendant.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' claim for punitive damages violates the Due Process Clause of the Fifth and  
14 Fourteenth Amendments of the United States Constitution as well as the California Constitution  
15 related to California statutory and common law, to the extent that the amount of such damages is  
16 disproportional to the wrongs alleged and the actual damages sought. Punitive damages are also  
17 unconstitutional to the extent that neither statutory law, common law nor the rules of civil  
18 procedure affords Defendant adequate procedural safeguards in light of the potential punishment  
19 at stake.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 Defendant denies all assertions of violations of the California Labor Code.

22 **TWENTIETH AFFIRMATIVE DEFENSE**

23 Any violation of Labor Code Section 226(b) by Defendant, if any, was unintentional.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 Upon information and belief, Plaintiffs' claims are barred by their own breaches of the  
26 duties owed to this answering defendant under California Labor Code sections 2856, 2857, 2858  
27 and 2859.

28 ///

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' cause of action for unfair business practices is barred by the business judgment rule.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

This action may not be brought as fashioned because Plaintiffs are not competent plaintiffs to bring the claims alleged.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' cause of action for unfair business practices is barred because Plaintiffs do not have the required administrative capacity.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The Plaintiffs are not reasonable representatives of the others alleged in the Complaint.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

This action is not properly brought pursuant to Business and Professions Code Section 17200, et seq., as common issues of fact and law do not predominate.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from recovery for unfair business practices as against this answering party because there was no unlawful, unfair or misleading conduct by Defendant.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from restitution of unjust enrichment for unfair business practices as against this answering party because Defendant obtained no unjust enrichment.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims under California Business and Professions Code section 17200 et seq. violate Defendant's constitutional rights under both the United States and California constitutions.

**THIRTIETH AFFIRMATIVE DEFENSE**

Defendant alleges that Plaintiffs' claims under California Business & Professions Code section 17200 et seq. are barred in whole or in part by sections 17203 and 17205 of the Business and Professions Code in that: (1) Plaintiffs have not suffered injury in fact and have not lost



1 money or property as a result of the conduct of which they now complain; (2) Plaintiffs have  
2 failed to meet the standing requirements of the unfair competition statute; and/or (3) Plaintiffs  
3 have not and do not comply with section 382 of the California Code of Civil Procedure.

4 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

5 Plaintiffs' causes of action seeking injunctive relief and restitution are barred in light of  
6 the fact that Plaintiffs have an adequate remedy at law.

7 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

8 Any protected activity engaged in by Plaintiff was not a motivating factor, nor was it  
9 causally connected, to any adverse employment action sustained by Plaintiff.

10 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

11 Defendant presently has insufficient knowledge or information upon which to form a  
12 belief as to whether it may have additional affirmative defenses available. Defendant reserves the  
13 right to assert additional affirmative defenses in the event discovery or further analysis indicates  
14 that additional unknown or unstated affirmative defenses would be applicable.

15 WHEREFORE, Defendant prays for relief as follows:

- 16 1. That the Complaint be dismissed with prejudice;  
17 2. That Plaintiff takes nothing by way of her Complaint;  
18 3. That Defendant be awarded costs of suit and attorneys' fees; and  
19 4. For such other and further relief as this Court deems just and proper.

20 Respectfully submitted,

21 DATED: July 7, 2008

22 DUCKOR SPRADLING METZGER & WYNNE  
23 A Law Corporation

24 By: 

25 JOHN C. WYNNE  
26 ELIZABETH BURKE VANN  
27 Attorneys for Defendants, S.A. THOMPSON,  
28 INC, dba ROTO-ROOTER SEWER & DRAIN  
CLEANING SERVICE; STANLEY A.  
THOMPSON; and LINDA A. BLACK

**DEMAND FOR JURY TRIAL**

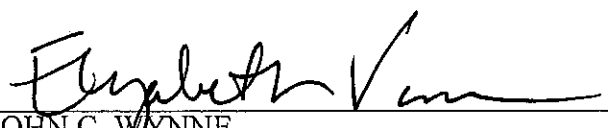
Defendants hereby demand a trial by jury.

Respectfully submitted,

DATED: July 7, 2008

DUCKOR SPRADLING METZGER & WYNNE  
A Law Corporation

By:

  
JOHN C. WYNNE  
ELIZABETH BURKE VANN  
Attorneys for Defendants, S.A. THOMPSON,  
INC. dba ROTO-ROOTER SEWER & DRAIN  
CLEANING SERVICE; STANLEY A.  
THOMPSON; and LINDA A. BLACK

John C. Wynne, Esq. (SBN 83041)  
 Elizabeth B. Vann (SBN 249252)  
 DUCKOR SPRADLING METZGER & WYNNE  
 3043 4<sup>th</sup> Avenue  
 San Diego, CA 92103  
 (619) 209-3000

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

BRIAN KING; PATRICK SOVACOOLO; and REX  
 MAXWELL, individually, and as private attorney  
 generals in the interest of the general public,

Plaintiffs,

v.

S.A. THOMPSON, INC., a California corporation  
 d.b.a. ROTO-ROOTER SEWER & DRAIN  
 CLEANING SERVICE; STANLEY A.  
 THOMPSON; LINDA A. BLACK; and DOE 1  
 through DOE 10, inclusive,

Defendants.

No.:

**DECLARATION OF SERVICE**

Person Served:

Attorney for Plaintiff:  
 Matthew P. Tyson, Esq.  
 Zachary T. Tyson, Esq.  
 TYSON & TYSON, LLP  
 2550 Fifth Ave., 9<sup>th</sup> Floor  
 San Diego, CA 92103  
 Tel: (619) 720-8350  
 Fax: (619) 615-2173

Date Served: July 7, 2008

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above-named person the following documents:

**DEFENDANTS' S.A. THOMPSON, INC. dba ROTO-ROOTER SEWER & DRAIN CLEANING SERVICE; STANLEY A. THOMPSON; and LINDA A. BLACK ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED COMPLAINT**

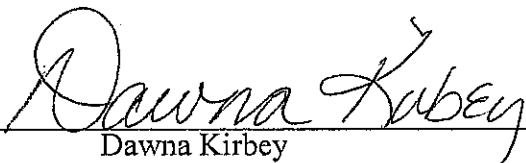
in the following manner:

check one)

- 1) ☐ By personally delivering copies to the person served.
- 2) ☐ By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid), copies to the person served at the place where the copies were left.
- 3) ☒ By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at San Diego, California, on July 7, 2008.
- 4) ☐ By fax transmission, I faxed the documents to the person at the fax number listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 7, 2008, at San Diego, California.

  
 Dawna Kirby